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BEFORE THE ARIZONA CORPORATION COMMISSION

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**COMMISSIONERS**

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BOB STUMP

SANDRA D. KENNEDY

PAUL NEWMAN

BRENDA BURNS

IN THE MATTER OF THE APPLICATION  
OF NAVOPACHE ELECTRIC  
COOPERATIVE, INC., AN ELECTRIC  
COOPERATIVE NONPROFIT  
MEMBERSHIP CORPORATION, FOR A  
DETERMINATION OF THE FAIR VALUE  
OF ITS PROPERTY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RETURN THEREON AND  
TO APPROVE RATES DESIGNED TO  
DEVELOP SUCH RETURN.

DOCKET NO. E-01787A-11-0186

**OPPOSITION TO INTERVENTION  
OF INVENERGY WIND  
DEVELOPMENT, LLC**

Navopache Electric Cooperative, Inc. ("NEC" or "Cooperative"), by and through undersigned counsel, opposes the Application to Intervene filed by Invenergy Wind Development, LLC ("Invenergy") dated July 27, 2011 on the grounds it fails to set forth adequate justification and would unduly broaden the scope of the proceeding.

The Arizona Corporation Commission permits intervention by "[p]ersons, other than the original parties to the proceedings, who are directly and substantially affected by the proceedings." Such persons must state the basis for the application in writing and . . . no application for leave to intervene shall be granted where by so doing the issues theretofore presented will be unduly broadened, except upon leave of the Commission. Arizona Administrative Code ("A.A.C.") R14-3-105(A) & (B).

1                   **INVENERGY IS NOT DIRECTLY AND SUBSTANTIALLY**  
2                   **AFFECTED BY THE CURRENT PROCEEDINGS.**

3                   The pending application deals with determining the fair value of Navopache's  
4 property for ratemaking purposes, fixing a just and reasonable return thereon and approving  
5 rates designed to develop such return. Invenergy is not a Navopache customer and the Petition  
6 to Intervene does not allege any facts demonstrating it would be directly and substantially  
7 affected by the current ratemaking proceeding. Therefore, the fundamental requirement of  
8 intervention – that the party requesting intervention be directly and substantially affected by  
9 the pending proceeding – has not been satisfied.

10                   **INVENERGY IS SEEKING TO UNDULY BROADEN THIS**  
11                   **RATE PROCEEDING**

12                   The Petition for Leave to Intervene identifies Invenergy as a Delaware  
13 corporation currently developing a wind energy project (of unspecified size) in eastern  
14 Arizona to be sited (at an undisclosed location) allegedly within Navopache's service territory.  
15 Invenergy seeks intervention, not to participate in the ratemaking process, but to broaden the  
16 current proceeding to "require Navopache to establish and publish interconnection provisions  
17 and procedures . . . [to] facilitate interconnection of generating facilities to the Navopache  
18 system in a timely manner." Interconnections involve complex operational, legal and  
19 regulatory issues not normally addressed in ratemaking proceedings. Commission Staff  
20 normally assigned to rate cases are not necessarily knowledgeable about such interconnection  
21 issues. Nor would one expect the typical retail customer likely to intervene in a rate case to  
22 be interested in or knowledgeable about interconnection issues. But injecting interconnection  
23 issues into this rate proceeding will unduly increase the time and expense of the ratemaking  
24 process for all participants.

1 For example, in its Petition Invenergy contends Arizona “requires any utility  
2 regulated by the Commission to allow third party generation facilities access to electric  
3 transmission service,” citing Arizona Revised Statutes (“A.R.S.”) §40-332.B (a copy of which  
4 is attached as Exhibit A). This statement is an intentional misstatement of Arizona law.

5 First, A.R.S. §40-332.B. only applies to “electricity suppliers” and “self-  
6 generators of electricity.” An “electricity supplier” means “a person, whether acting in a  
7 principal, agent or other capacity, that is a public service corporation that offers to sell  
8 electricity to a retail electric customer in this state.” A.R.S. §40-201(14). Based upon  
9 information and belief, Invenergy has not applied for or been granted a certificate of public  
10 convenience and necessity (“CC&N”) to act as either a public service corporation or an  
11 electric service provider. Yet, no public service corporation can begin construction of a line,  
12 plant, service or system without first having obtained a CC&N from the Commission. A.R.S.  
13 § 40-281.

14 The term “self-generator of electricity” is not defined by Arizona statute but  
15 “self-generation” is defined in the Commission’s Resource Planning rules as “the production  
16 of electricity by an end user.” A.A.C. R14-14-2-701(41) (formally (37)). Invenergy’s Petition  
17 does not assert any facts that would qualify it as “self-generator of electricity.” As neither a  
18 public service corporation holding a CC&N to generate electricity in Arizona nor a self-  
19 generator of electricity, Invenergy lacks standing to invoke A.R.S. §40-332.B.

20 Furthermore, A.R.S. §40-332.B does not require Navopache to provide access to  
21 its system. Rather the statute refers to accessing “transmission service” and distribution  
22 service. Navopache does not currently provide “transmission” service and the statute does not  
23 mandate that it initiate a service that it currently does not provide.

24 Currently Navopache’s 69kV system is used exclusively to secure power and  
25 make deliveries for the benefit of its retail customers. Such use is not subject to regulation by

1 the Federal Energy Regulatory Commission ("FERC"). Invernergy's request for access to  
2 Navopache's 69kV system to allow Invernergy to make wholesale and/or retail sales to third  
3 parties could subject Navopache to FERC jurisdiction. *See, Florida Power & Light Company*  
4 *133 FERC ¶ 61, 121 (2010) (Denying Petition for Declaratory Order and confirming FERC*  
5 *jurisdiction over certain QF Interconnect Agreements).* FERC jurisdiction should not be  
6 vested lightly and this ratemaking docket is not the place to evaluate such an issue.

7 In addition to the foregoing legal issues, interconnection involves operational  
8 issues that must be evaluated on a case-by-case basis. Implementing procedures and policies  
9 for interconnection does not eliminate the need to make case-by-case operational evaluations  
10 of the request.<sup>1</sup> Navopache has provided Invernergy a copy of its Interconnection  
11 Requirements for Distributed Generation which, while not directly applicable to Invernergy's  
12 request (because Invernergy's request does not involve distributed generation), it provides a  
13 guide to the process Navopache will use to evaluate the request. Navopache is willing to  
14 engage in discussions with Invernergy. In the event a mutually acceptable resolution is not  
15 reached, Invernergy, to the extent permitted by law, may file a separate complaint proceeding  
16 pursuant to A.R.S. §40-246 to address its concerns.

### 17 CONCLUSION

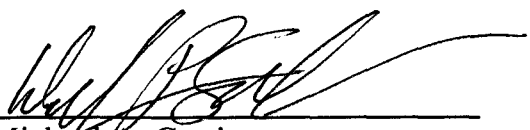
18 Invernergy's Petition for Leave to Intervene has not demonstrated Invernergy will  
19 be directly and substantially impacted by the pending application. Instead Invernergy seeks to  
20 inject a new issue – interconnection policies as they relate to a generator of electricity that  
21 does not hold a CC&N from the Commission seeking access to Navopache's 69kV system in  
22 order to sell electricity at wholesale and/or retail to third parties. The complex issues raised by  
23 the proposal are best worked out first between the parties. In the event a mutual resolution is

24  
25 <sup>1</sup> By Decision No. 69674, dated June 28, 2007, the Commission adopted a modified version of the PURPA standard on  
interconnection (dealing with distributed generation) and also ordered a rulemaking docket be opened on DG  
Interconnection Rules for Generating Facilities of 10 MW or less. A docket was opened October 19, 2007 (RE-00000A-  
07-0609), but no rule has yet been proposed.

1 not reached, then Invenergy may seek to invoke the Commission's review pursuant A.R.S. §  
2 40-246. This rate case proceeding is not the appropriate place to address the issues raised by  
3 Invenergy. For the foregoing reasons, Navopache requests the Petition for Leave to Intervene  
4 filed by Invenergy Wind Development LLC be denied.

5 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of August, 2011.

6 CURTIS, GOODWIN, SULLIVAN,  
7 UDALL & SCHWAB, P.L.C.

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PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 14<sup>th</sup> day of August, 2011, I caused the foregoing document, with attachments, to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

With a copy of the foregoing e-mailed  
this 14<sup>th</sup> day of August, 2011 to:

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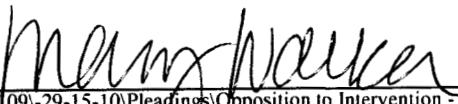
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With a copy of the foregoing mailed  
this 14<sup>th</sup> day of August, 2011 to:

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109\29-15-10\Pleadings\Opposition to Intervention - Invenergy 08 04 11

## EXHIBIT A

### 40-332. Power of commission to order joint use of facilities belonging to public service corporation

B. Every public service corporation shall allow every electricity supplier and self-generator of electricity access to electric transmission service and electric distribution service under rates and terms and conditions of service that are just and reasonable as determined and approved by regulatory agencies that have jurisdiction over electric transmission service and electric distribution service. Nothing in this subsection limits the access of a public power entity as defined in section 30-801 to the transmission services of public service corporations in accordance with the federal power act, 16 United States Code section 792.